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C O N F I D E N T I A L SECTION 01 OF 03 KABUL 000466

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CENTCOM FOR CG CFC-A. CG CJTF-76 POLAD

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TAGS: PGOV PREL PTER EAID MARR AF

SUBJECT: UPDATE ON AMNESTY RESOLUTION

REF: A. (A) 07 KABUL 324
B. (B) 06 KABUL 5825
C. (C) 06 KABUL 5931

Classified By: Ambassador Ronald Neumann for reasons 1.4 (B) and (D)

SUMMARY

¶1. (U) During a press conference on February 6, Presidential Spokesman Karim Rahimi said that President Karzai may reject the draft resolution on amnesty passed by the Wolesi Jirga (Lower House of Parliament) on January 31. Even if Karzai were to reject the resolution, it could still pass if it is approved by the Upper House of Parliament and later receives a two-thirds majority vote in favor within the Wolesi Jirga. Given widespread unease with the idea of a blanket amnesty for all former fighters in Afghan wars over the past 25 years and the document's questionable legal status, it is unlikely it will end up as law. The Palace is already saying that, "nobody, not even the President, has the right to grant immunity to people who committed clear and obvious crimes and the constitution is clear on this." On February 4, a Taliban spokesperson reportedly rejected the offer of amnesty as long as foreign troops remain in Afghanistan. Embassy has not engaged openly in the debate on the merits of the declaration, instead highlighting USG support for existing structures (such as the Action Plan on Peace, Justice and Reconciliation; PTS, the Afghan Independent Human Rights Commission, and the courts) under the Afghan Constitution and London Compact established to deal with issues of reconciliation and justice. We will quietly urge the GOA not to adopt this measure but public U.S. pressure would produce an unhelpful backlash. End summary.

¶12. (U) Several Dari language media outlets covered Presidential Spokesman Rahimi's assurances on February 6 that the Palace's first priority was to investigate whether the draft resolution passed by the Lower House conforms to or contradicts the constitution. Rahimi rejected rumors that Karzai was under pressure from different sides (presumably the MPs who proposed the resolution on one side vs. the international community and Afghan Independent Human Rights Commission (AIHRC) on the other) that could affect his decision on the matter. Local media outlets also broadcast a Taliban spokesman's reported rejection of the resolution's offer for amnesty on February 4.

¶13. (U) It is unclear whether the MPs who drafted the resolution will still seek pass it to the Meshrano Jirga (Upper House) for approval. If approved, and President Karzai does not sign the resolution, the Wolesi Jirga can override the President's veto with a two-thirds majority vote (166 out of 249 total votes). However, given indications from the Palace and the international community that the resolution, even if passed, would conflict with the Afghan constitution, its enforceability would still be in doubt. International observers have pointed out that national courts in various countries, most notably former Latin American dictatorships, have overturned previous national amnesties on grounds that they violated that

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country's constitution.

¶14. (U) The resolution was reportedly drafted by a new, de-facto, and self-declared Parliamentary Commission on Reconciliation, whose formation was announced in article 6 of the resolution. This new commission includes Burhanuddin Rabbani (chair), Mohammed Mohaqeq (spokesperson), Noorulhaq Olumi, Saleh Mohammed Registani, Sharifa Zormati, Qadriya Ibrahim Yazdanparast, Sayed Mustafa Kazimi, Abdul Sattar Darzabi, Mawlawi Abdul Khabir, and Taj Mohammad Mujahed. (Note: Several MPs have suggested that some members of the commission were themselves unaware of the resolution before it was presented before the Wolesi Jirga. One MP reported that several of the Commission's members were unaware that they were even a part of the Commission until well after the draft was introduced into the plenary. End Note.)

MPs Speak Out Against Resolution

¶15. (U) During a February 5 press conference, several MPs denounced the Resolution, including Engineer Abbas, Shukria Barakzai, Dr. Kabir Ranjbar, Painda Jowainda, and Shinkai Karokhil. Barakzai asserted that the resolution goes against Islam, which says that forgiveness cannot be legislated and that only victims may forgive their aggressors. She argued that it was therefore a direct violation of the constitution, which states no laws shall contravene the tenets of Islam. Other MPs noted the resolution's violation of a constitutional article stating that no one group of people shall be given any privileges over other groups. Abbas noted that Parliament was not authorized to issue forgiveness in cases of war crimes. Ranjbar pointed out that the resolution violated the Afghanistan Compact signed in London in January 2006, which calls on the GOA to foster transitional justice; he stated that, "If all the

Taliban are forgiven, that is not transitional justice."

Minimal International Community Reaction

¶6. (C) The international community has responded cautiously. On February 1, UNAMA released a measured public statement, noting that "UNAMA is keen to ensure that the rights of victims remain at the heart of this debate. For any process of national reconciliation to succeed the suffering of victims must be acknowledged and impunity tackled. No one has the right to forgive those responsible for human rights violations other than the victims themselves." Chris Alexander, Deputy to the Special Representative of the UN in Afghanistan, noted that as a matter of policy, the UN will not accept amnesty for international crimes of genocide, crimes against humanity, war crimes and other serious violations of international humanitarian law - as this resolution likely would. Other western embassies who make up part of the "Transitional Justice Core Group," (which includes Germany, Holland, Canada, and the EU) intend to raise the issue with Karzai jointly in the context of a larger meeting that will also address other topics. Some EU members may also hold bilateral discussions with influential Parliamentarians who support the resolution.

¶7. (C) There was considerable debate within the international community about whether public statements might be counter productive in terms of increasing interest in the resolution, further polarizing the debate, and injecting concerns about Afghan sovereignty versus international interference

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into public discourse. There were also concerns about creating additional problems for the AIHRC, which has received several threats (septel) as a result of the recent debate on transitional justice.

Human Rights Community Pushing For More Support

¶8. (U) Afghan civil society groups have nevertheless pushed for more public opposition from the international community. Horia Mossadiq of the Human Rights Research and Advocacy Consortium noted that many Afghans believe the international community will not speak out strongly against the resolution because they are perceived to have played a role (immediately after the fall of the Taliban) in empowering the same former warlords who have drafted the resolution. For its part, however, the AIHRC favors measured involvement by the international community in the form of quiet pressure through private conversations with the Palace and MPs. Nader Nadery, Spokesperson for the AIHRC, has participated in several TV and radio debates with Mohaqeq and other MP's who sponsored the legislation, during which Nadery has stressed that decisions of amnesty rest with the victims. He has privately told us he agrees with quiet international community action against the declaration coupled with public support for the Afghan institutions, including PTS, the courts and the Action Plan on Peace, Justice, and Reconciliation.

COMMENT

¶9. (C) Richard Bennett, Director of UNAMA's Human

Rights Office, told POLOFF that FM Spanta had discussed the issue with Karzai the evening before Rahimi's statement. A clear opponent of the resolution, Spanta had reportedly encouraged the international community to take both public and behind-the-scenes measures to prevent further implementation of the resolution. Embassy will privately urge the GOA to kill this measure as public pressure would be counter-productive. Given the Palace's Feb. 6 statements, however, this resolution may die a quiet death without intense international involvement, perhaps demonstrating that if given room to do the right thing, the GOA can handle these sensitive issues on its own.

NEUMANN